REDACTED – FOR PUBLIC INSPECTION

January 29, 2015

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: ***In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593***

Dear Ms. Dortch:

Please find enclosed the redacted version of EarthLink's response to the Mandatory Data Collection in the above referenced proceeding.[1] The confidential and highly confidential versions of the filing, which contain information that the Wireline Competition Bureau has deemed eligible for protection under the *Data Collection Protective Order*,[2] have been submitted to the Secretary's Office via the Special Access Web Portal.

Please do not hesitate to contact me if you have any questions regarding this submission.

Respectfully submitted,
/s/
Christopher Murray
Senior Vice President, Public Policy

Enclosure

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[1] *In the Matter of Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order on Reconsideration, 29 FCC Rcd 10899, Appendix A (2014).

[2] *In the Matter of Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* Order and Data Collection Protective Order, 29 FCC Rcd 11657, Appendix A (2014) ("*Data Collection Protective Order*").

II.A.5 PUBLIC

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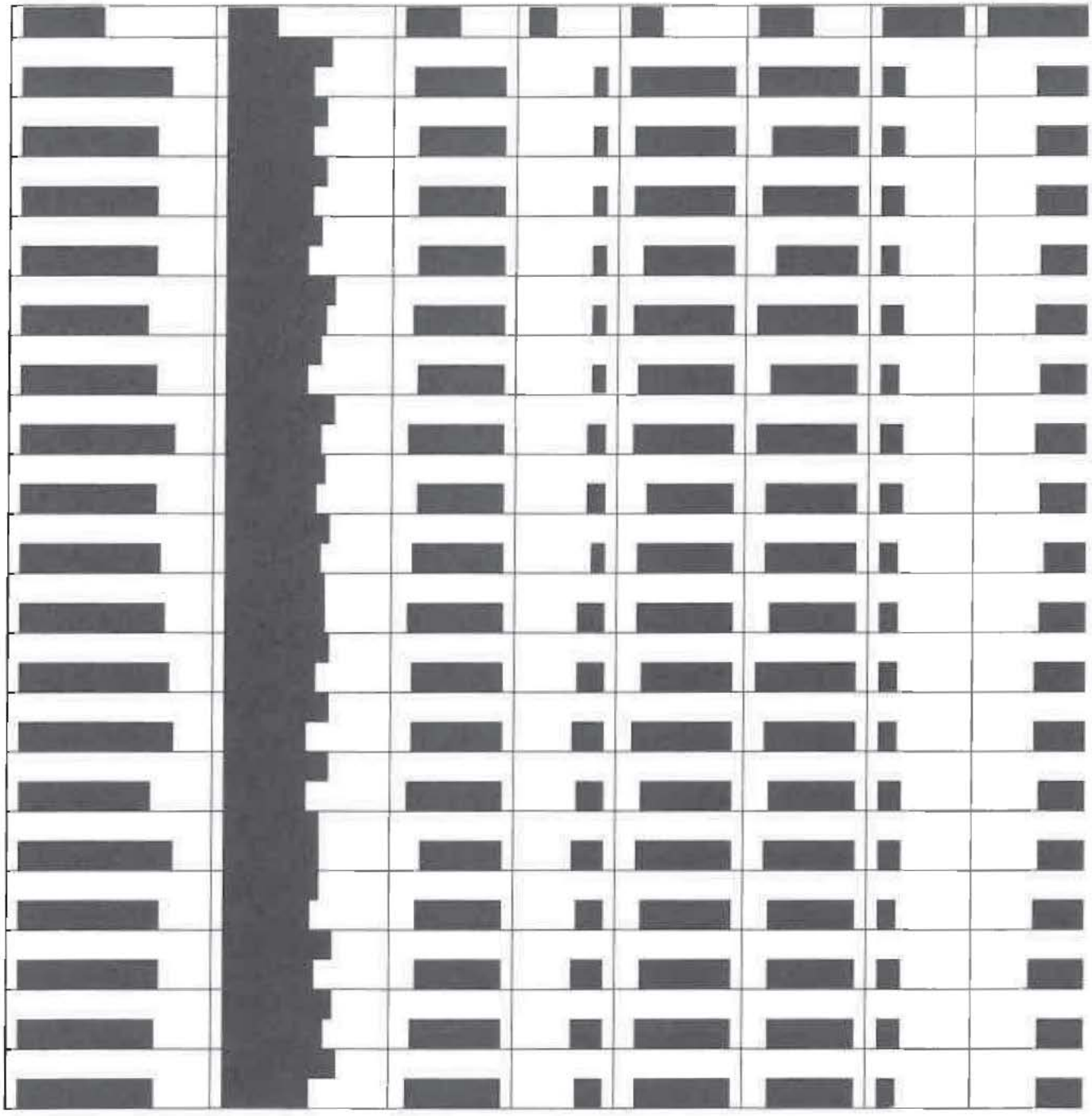
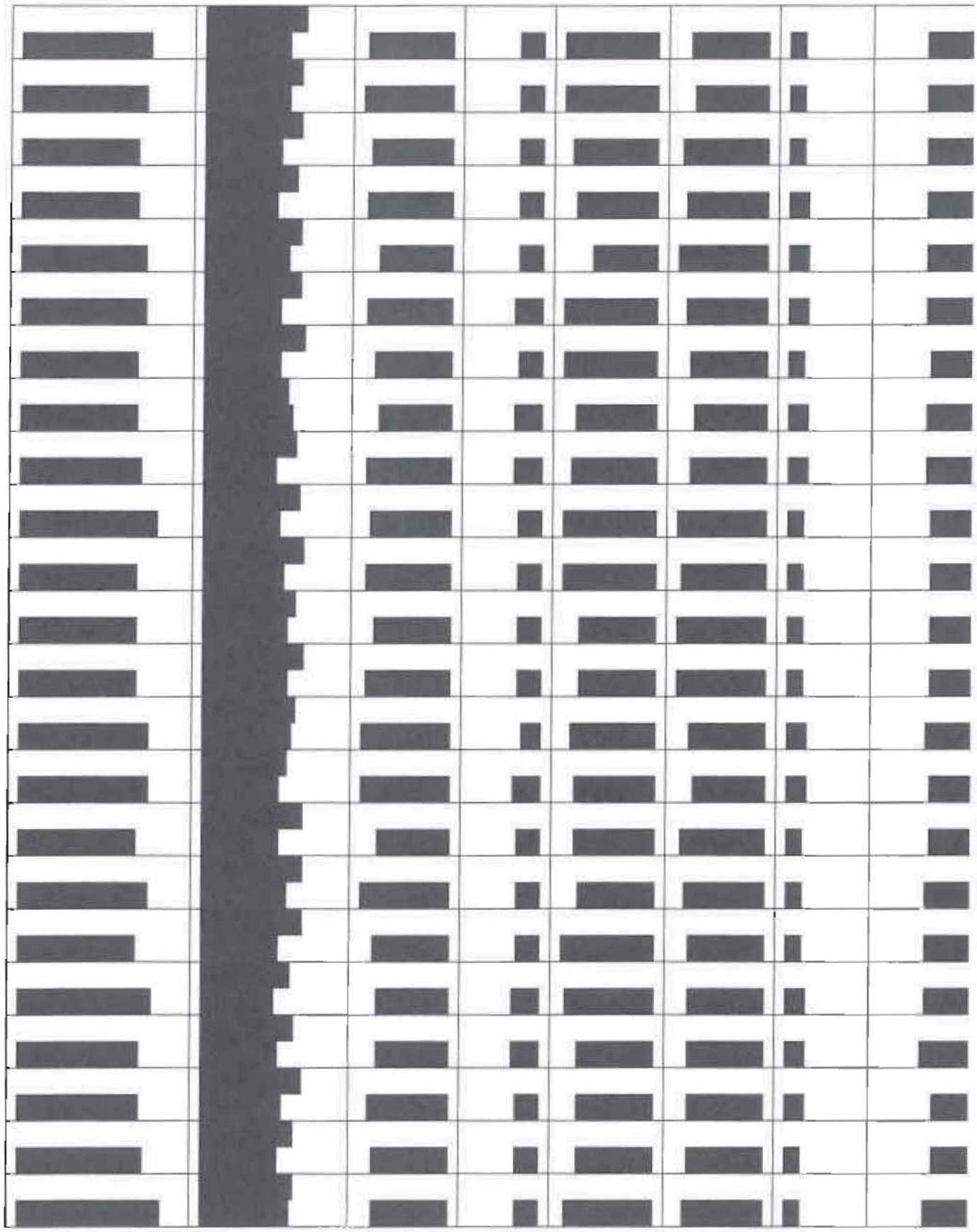
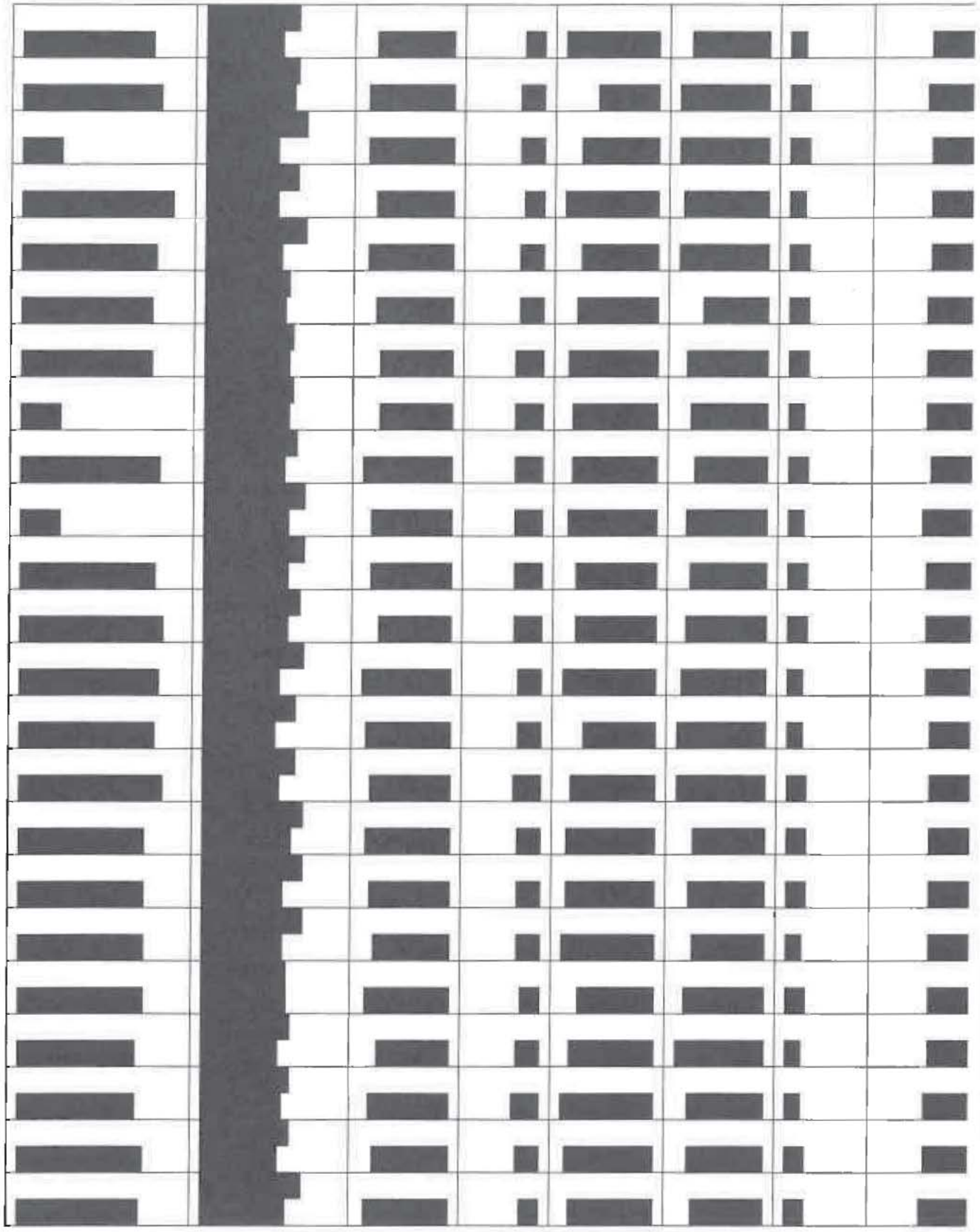
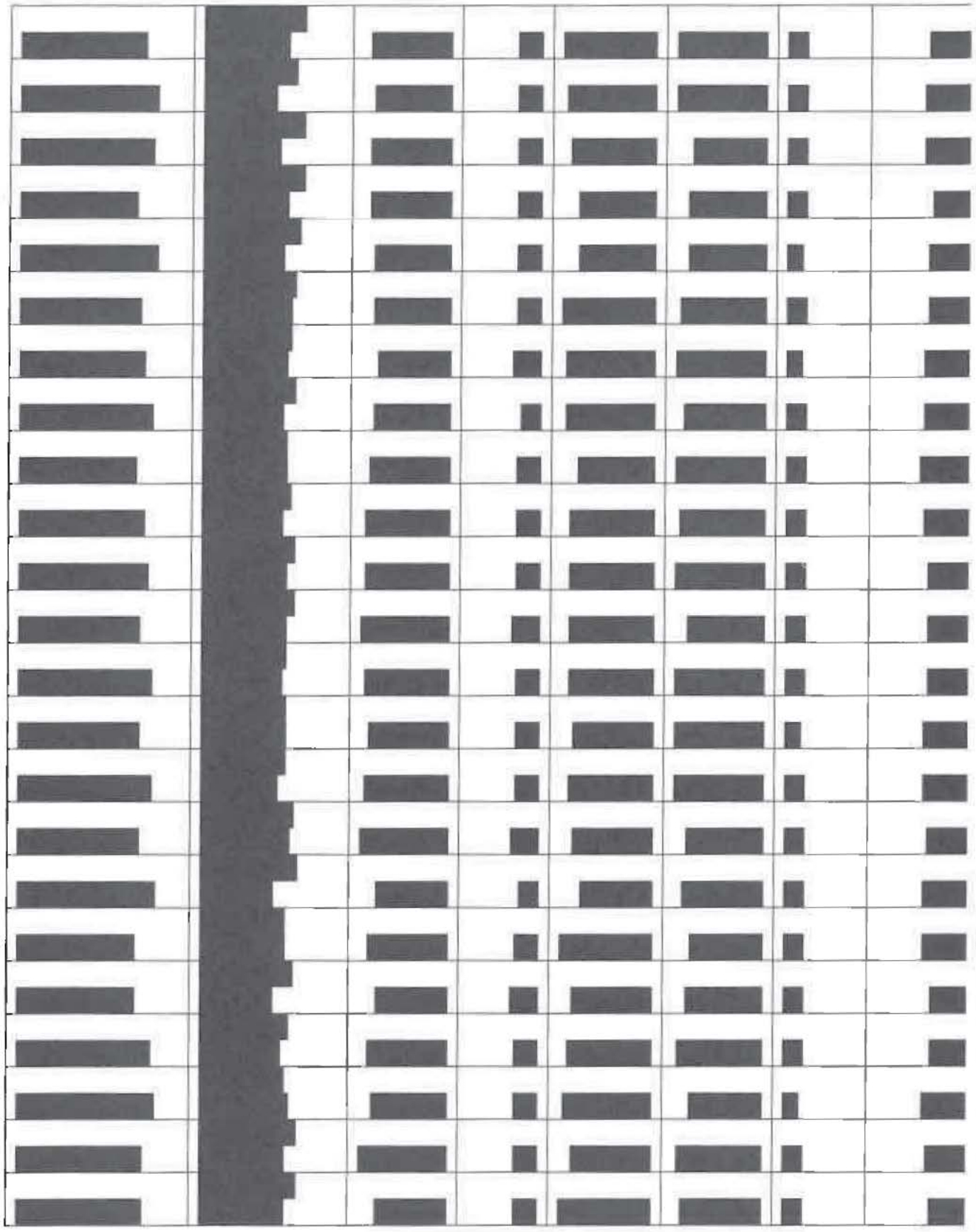
See Table below.

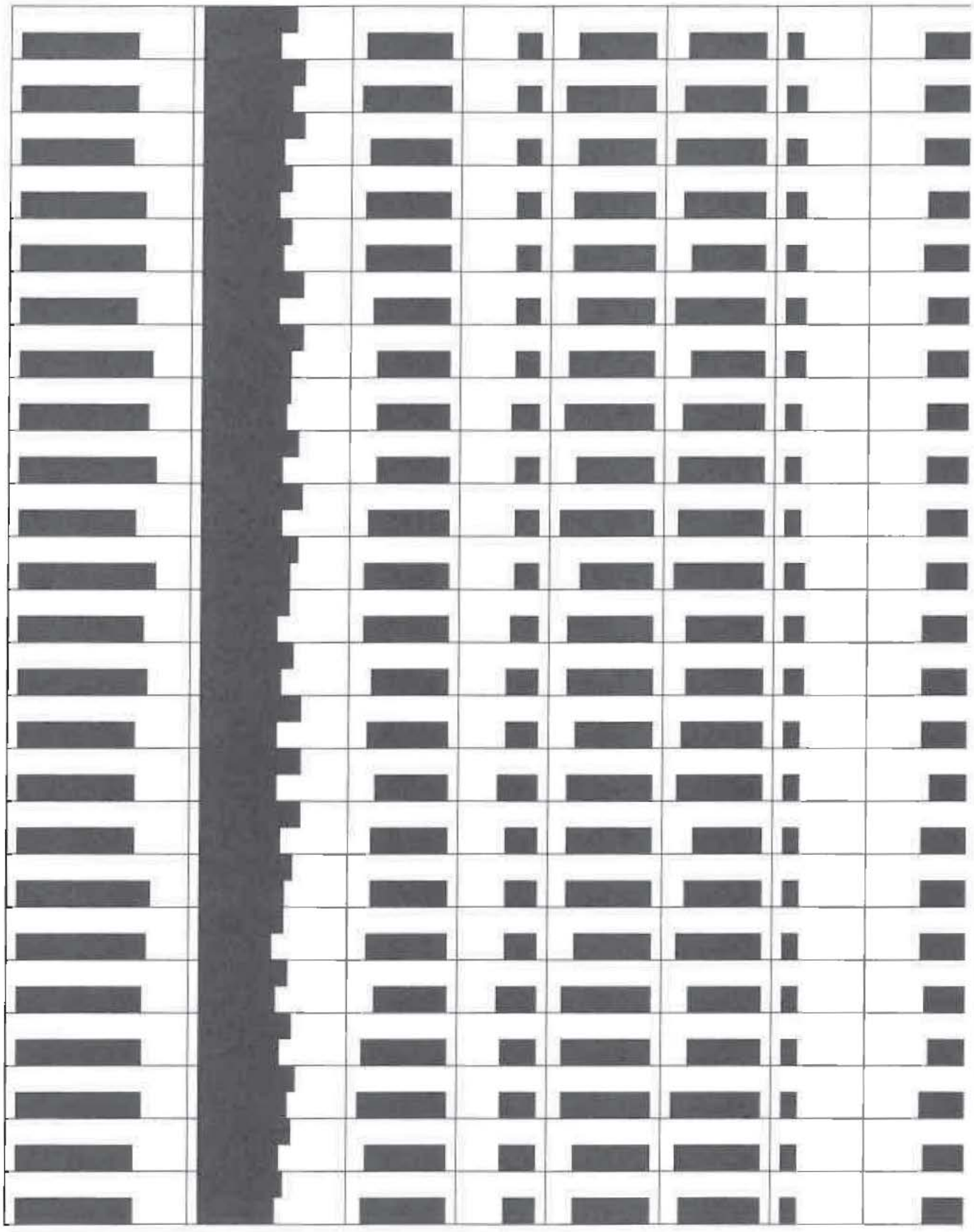
*****BEGIN HIGHLY CONFIDENTIAL**

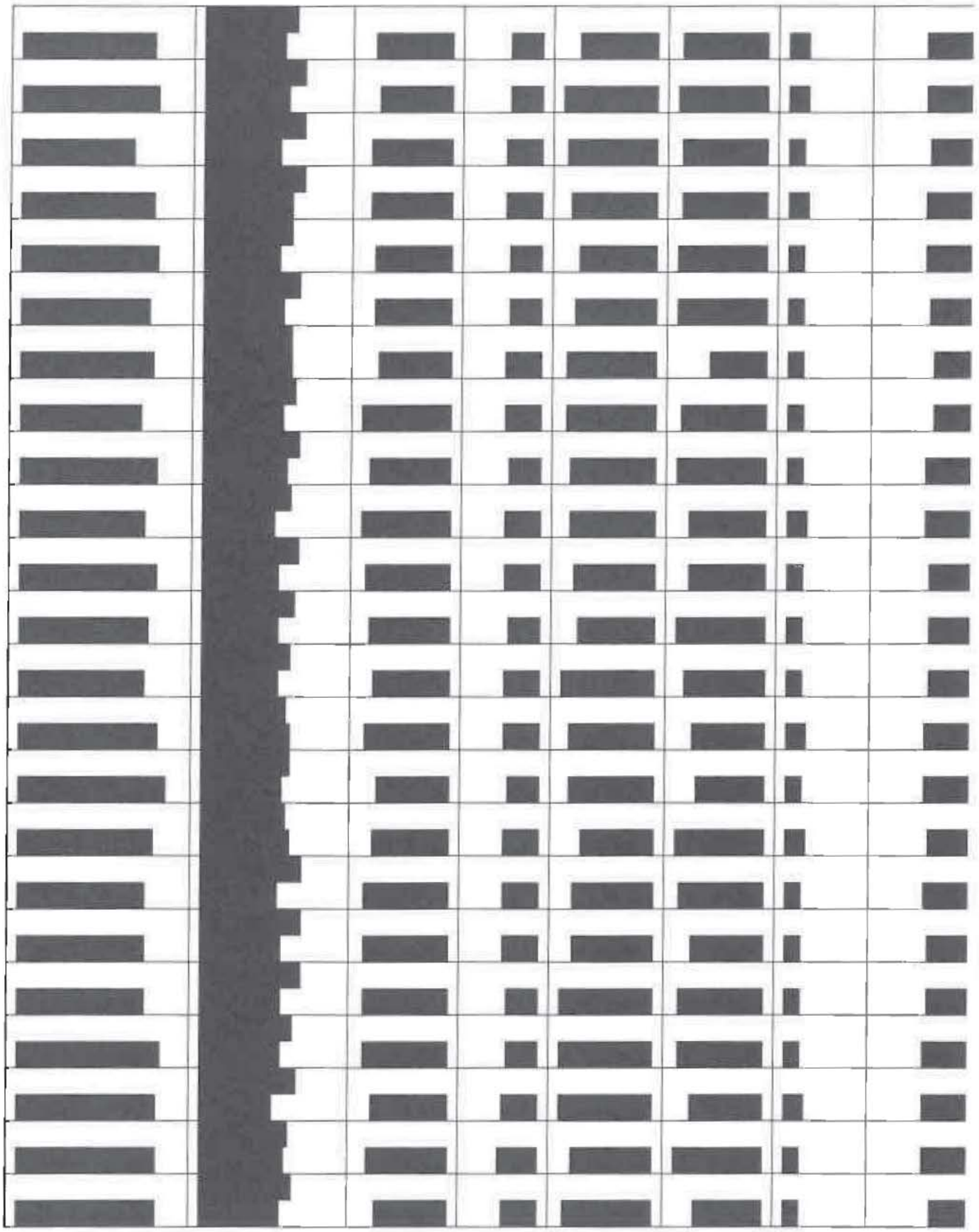


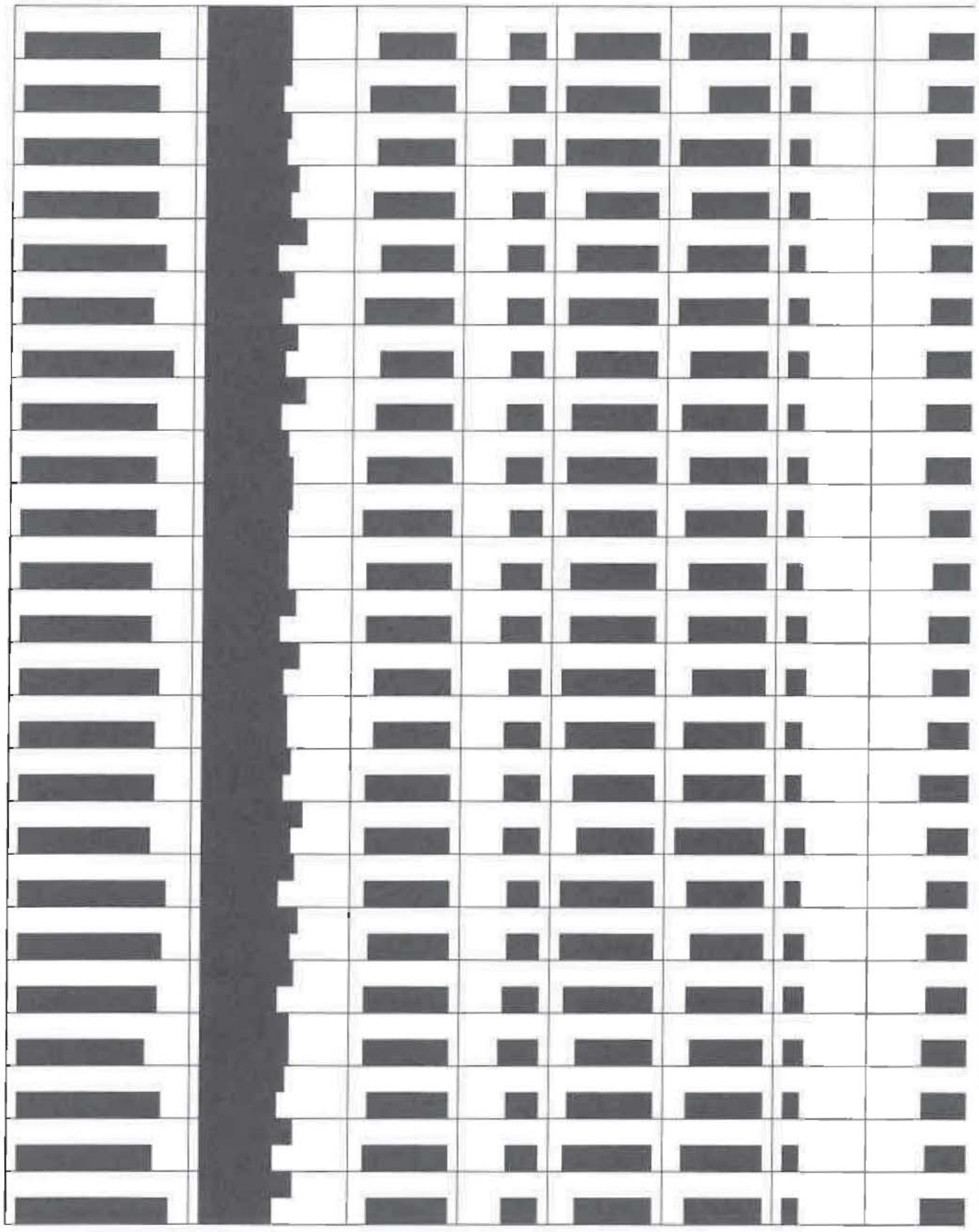


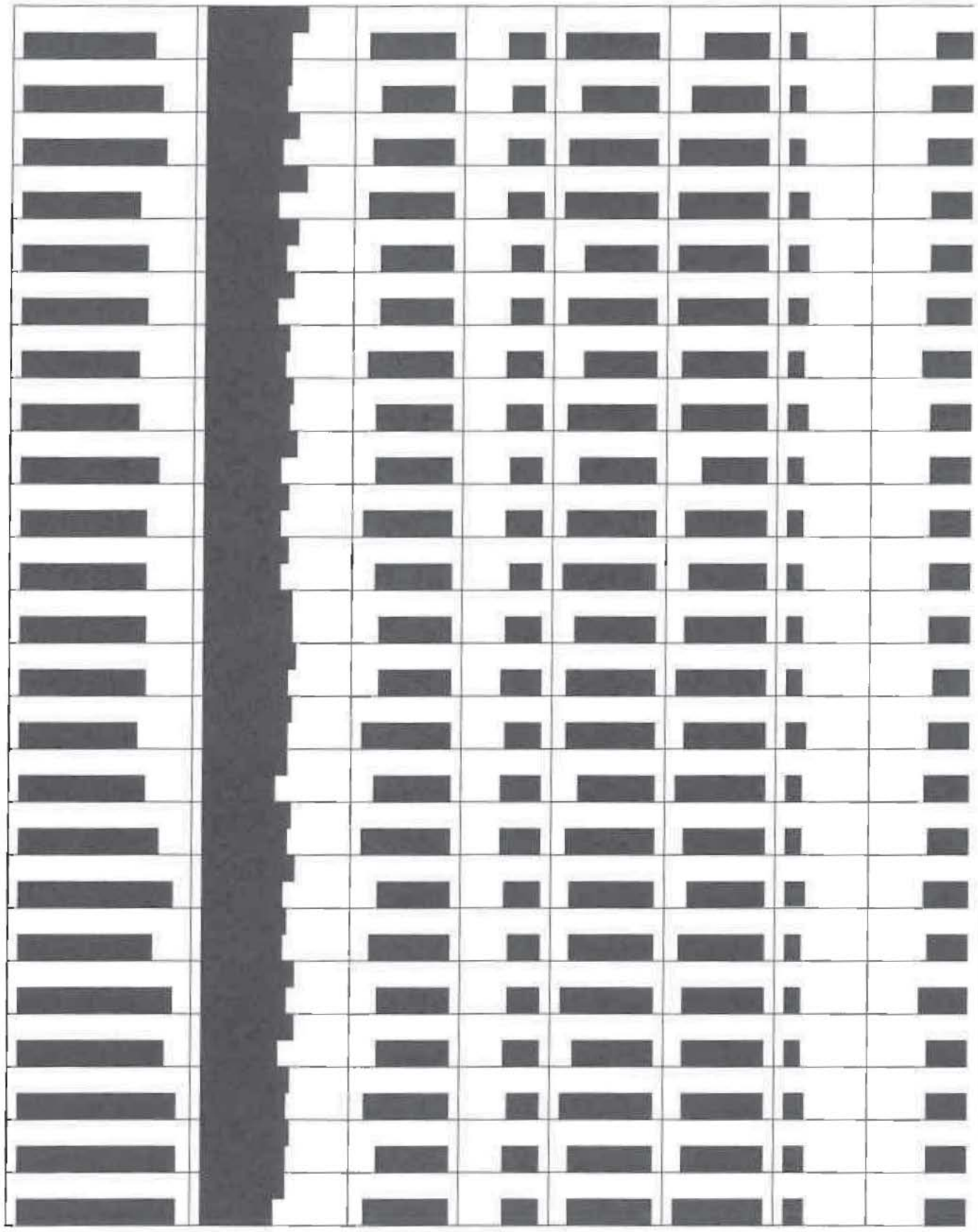


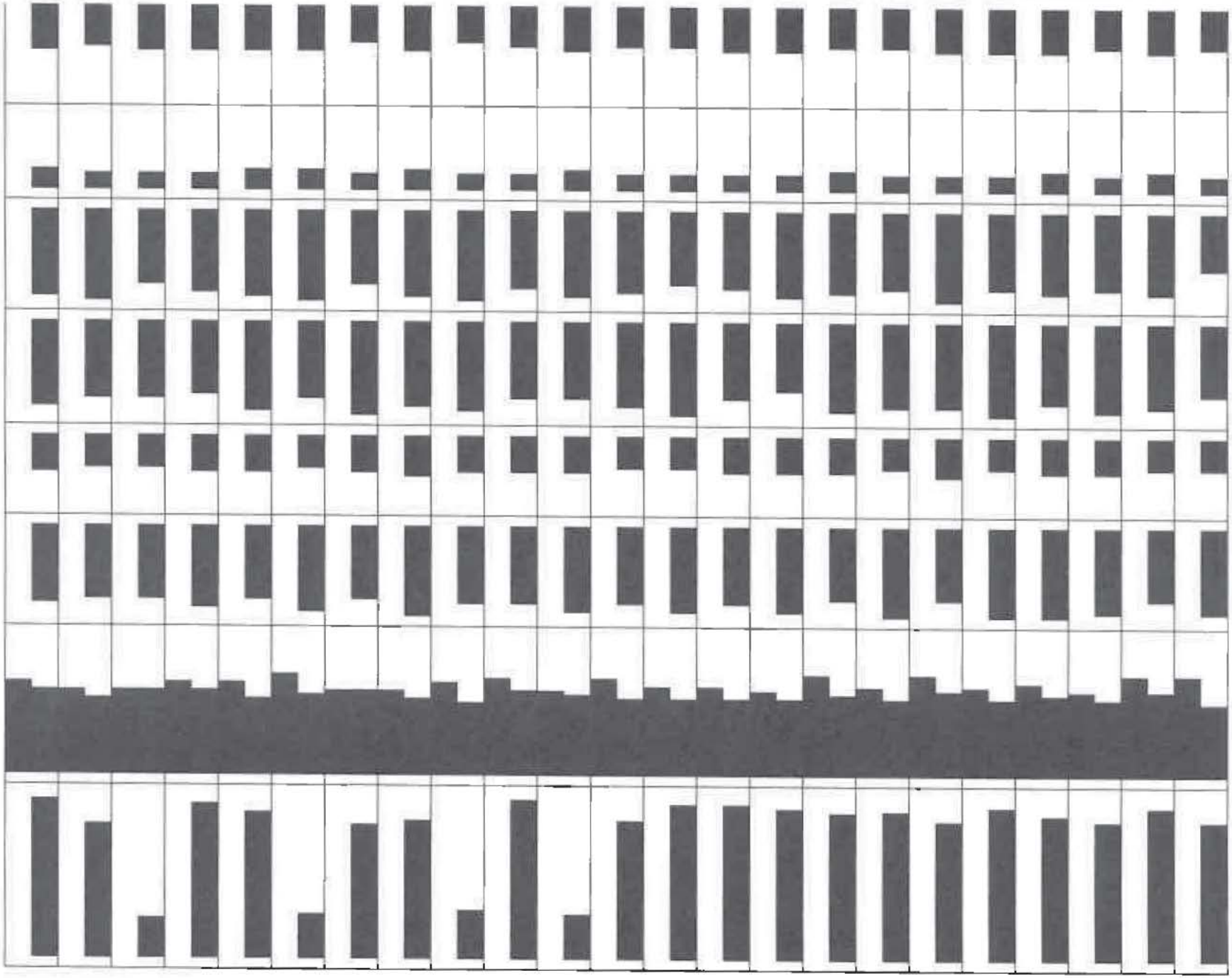


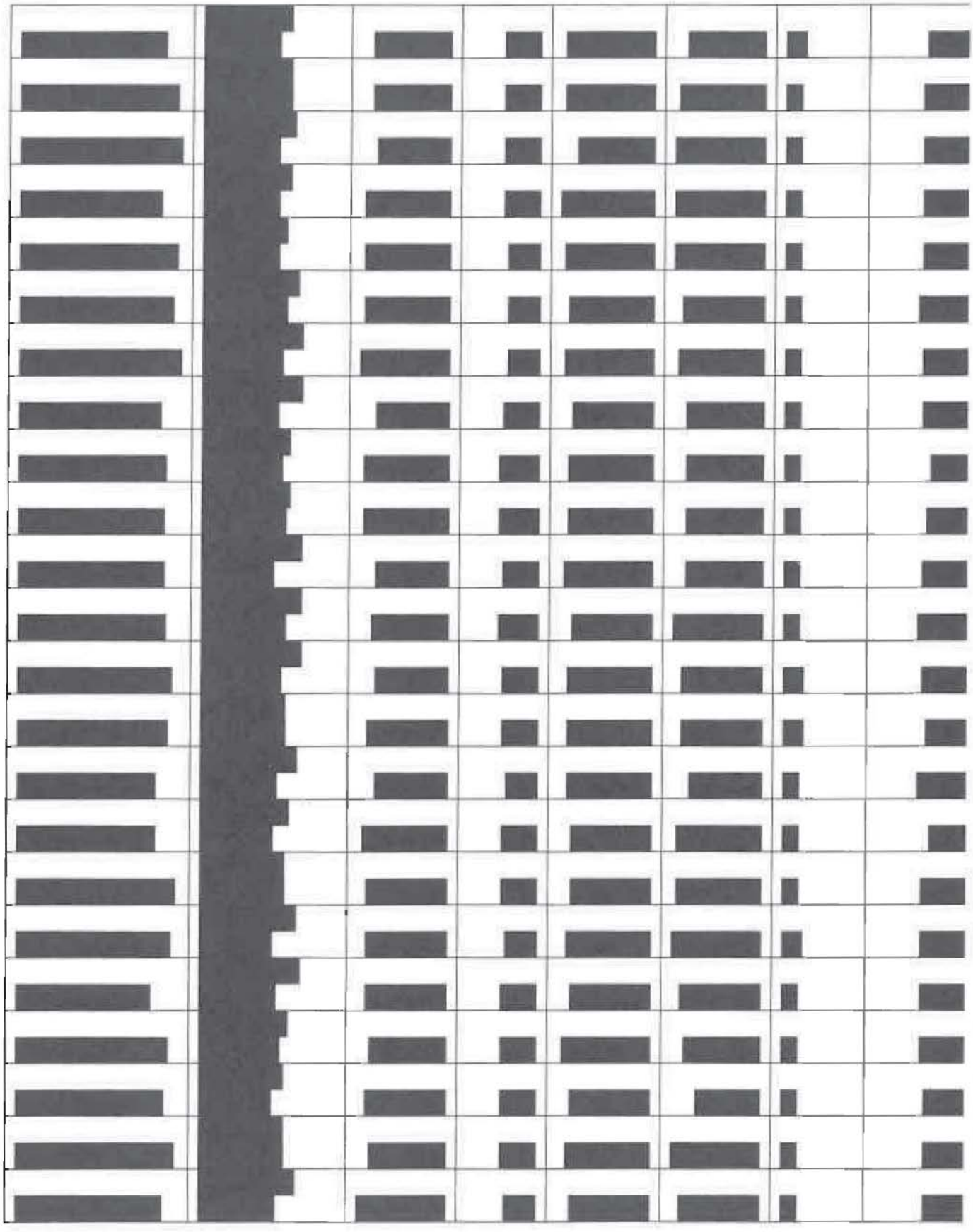


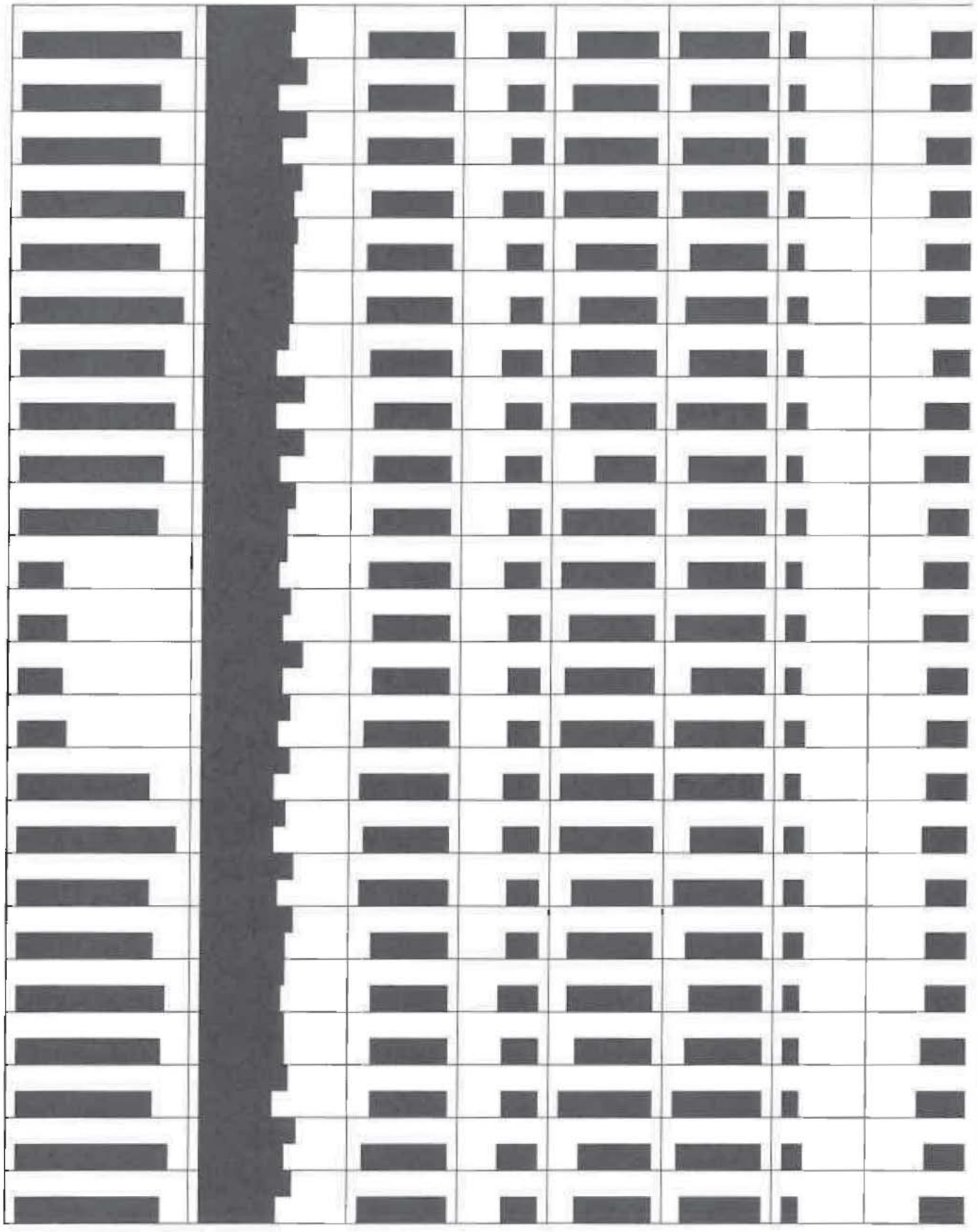


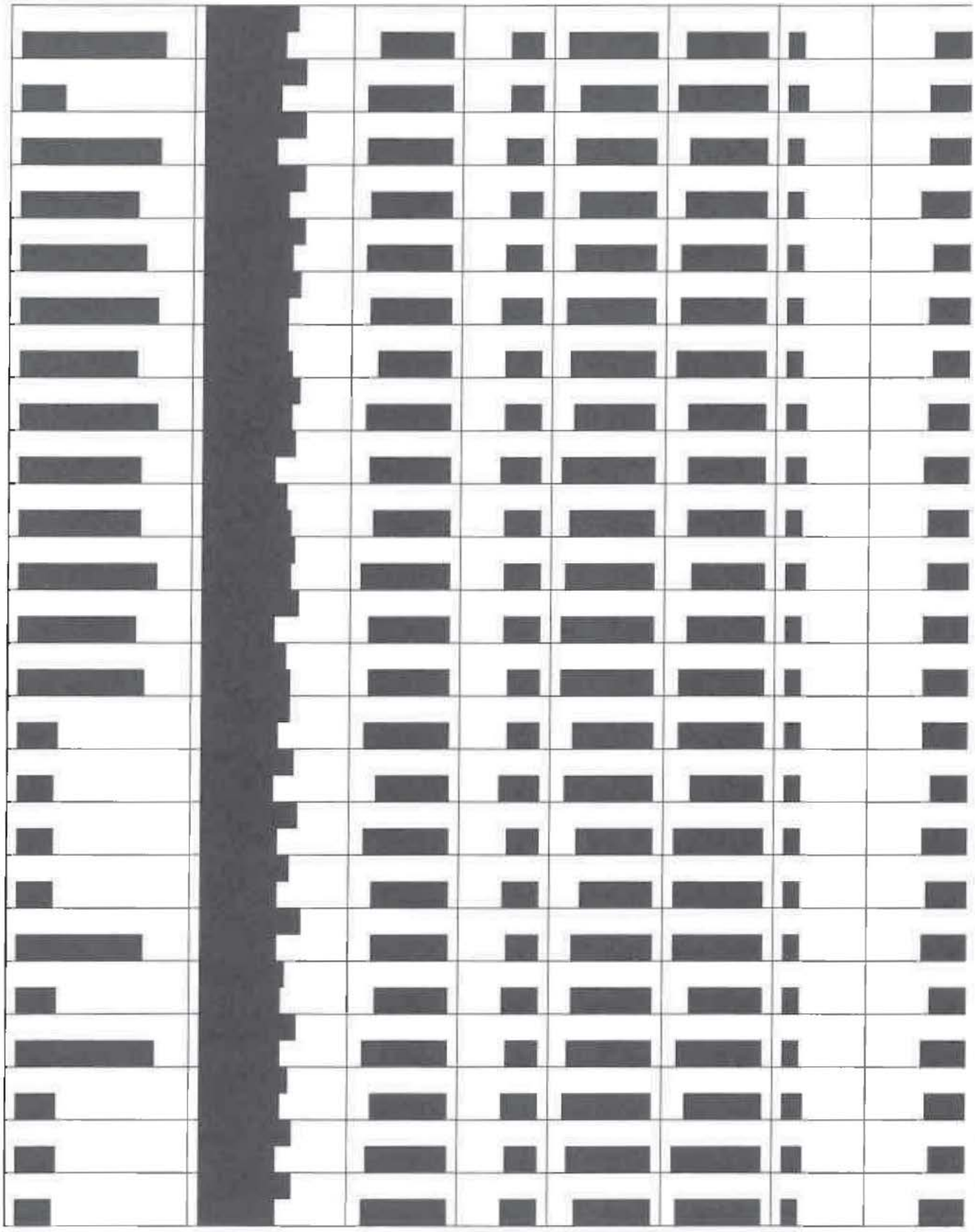


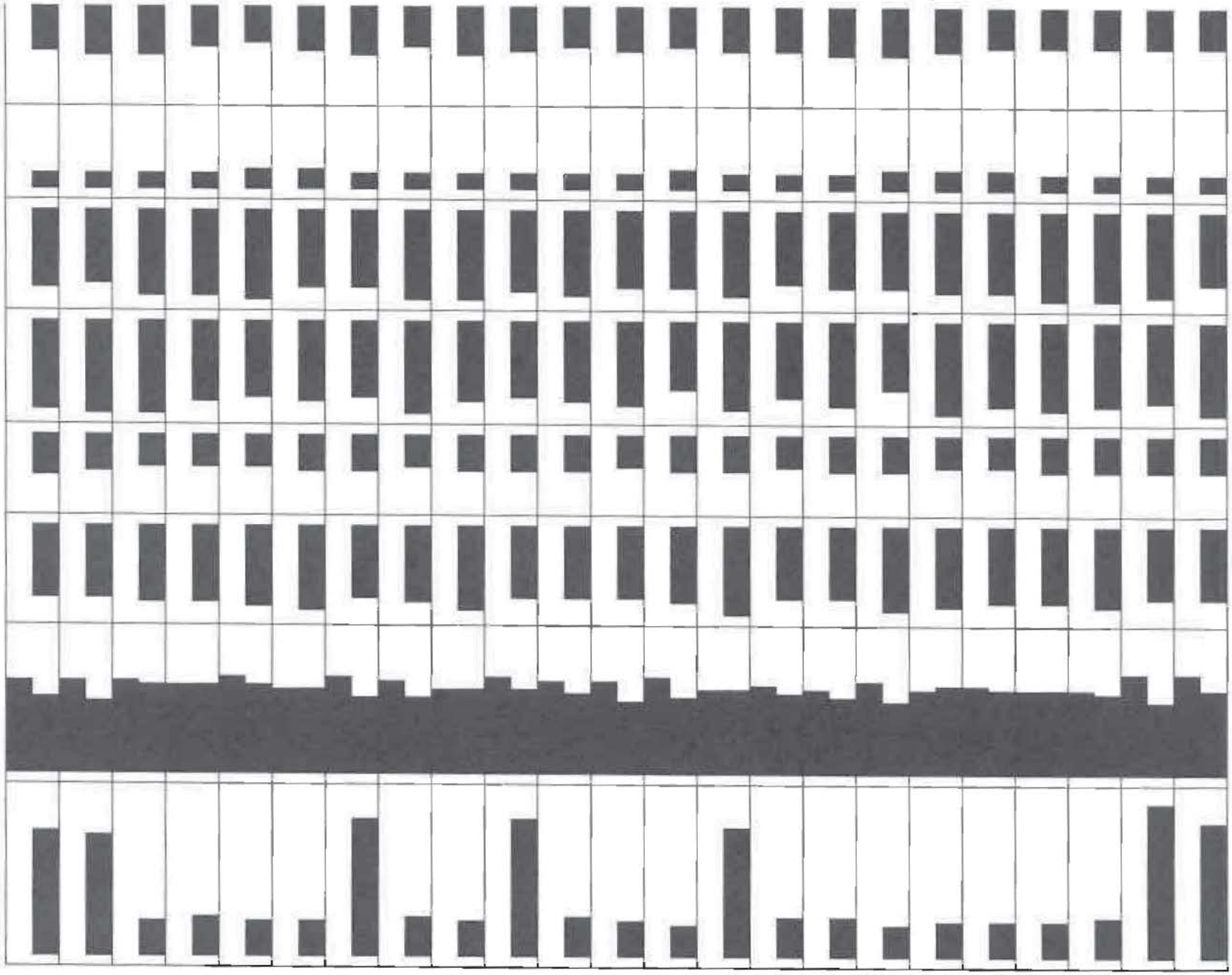


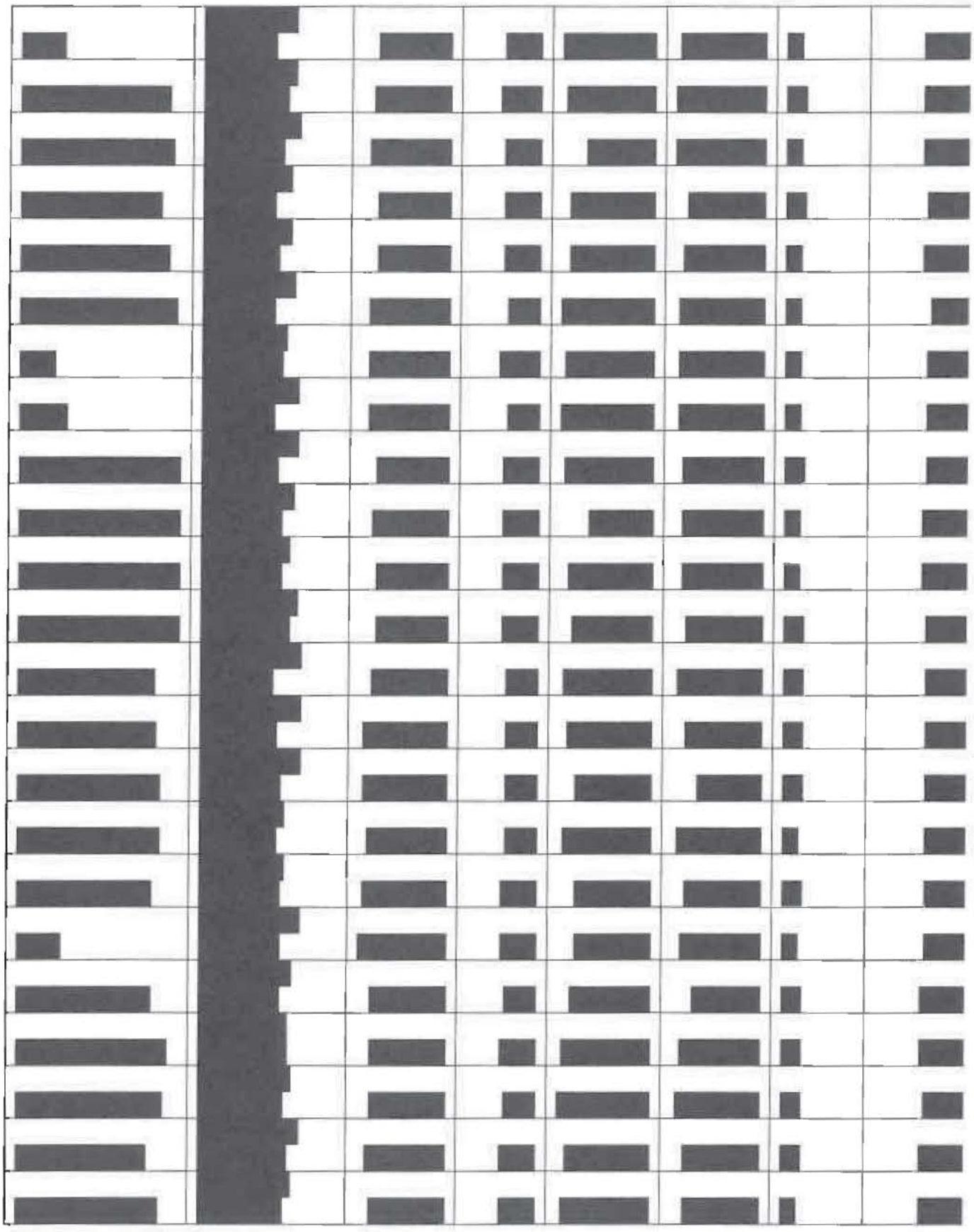


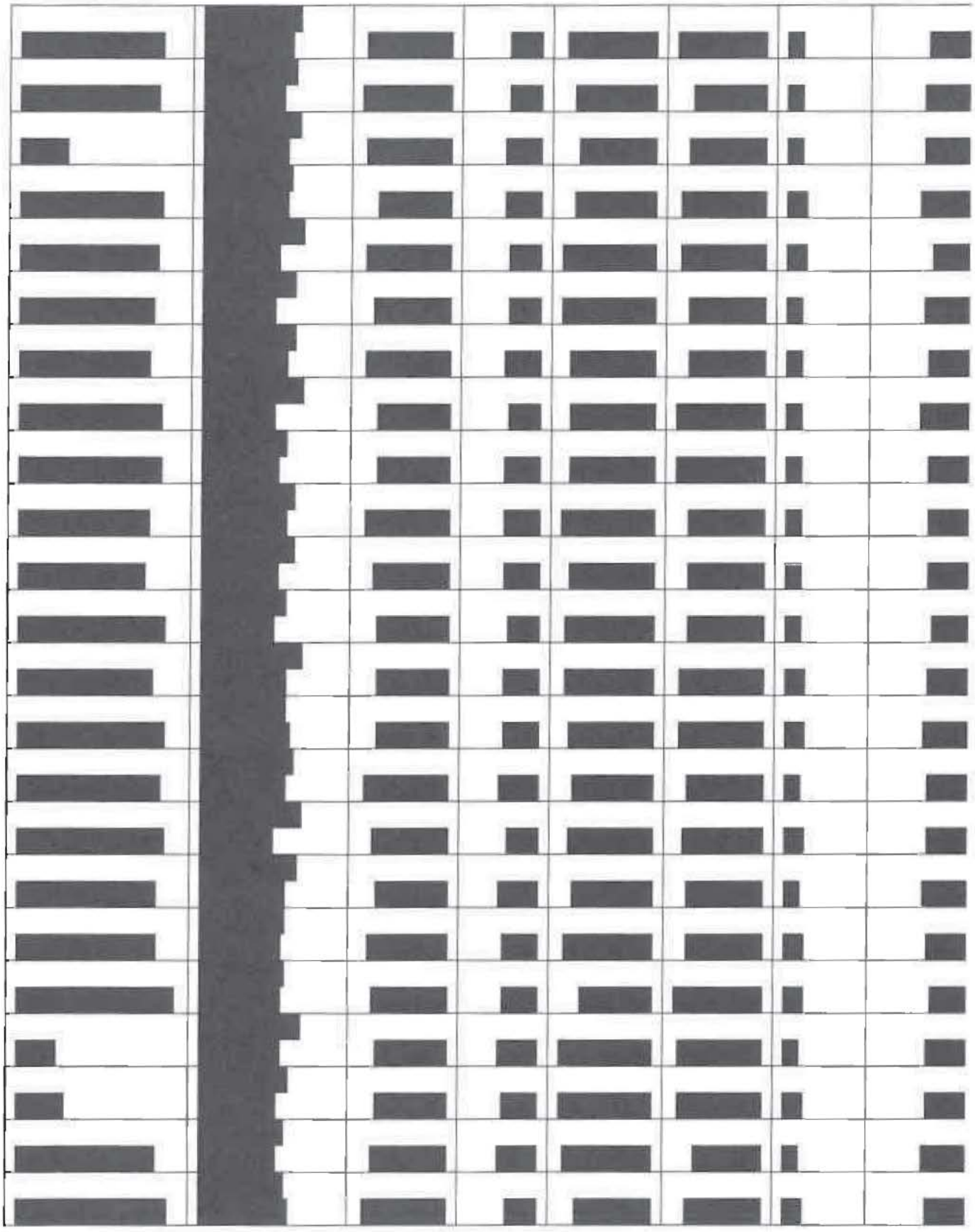


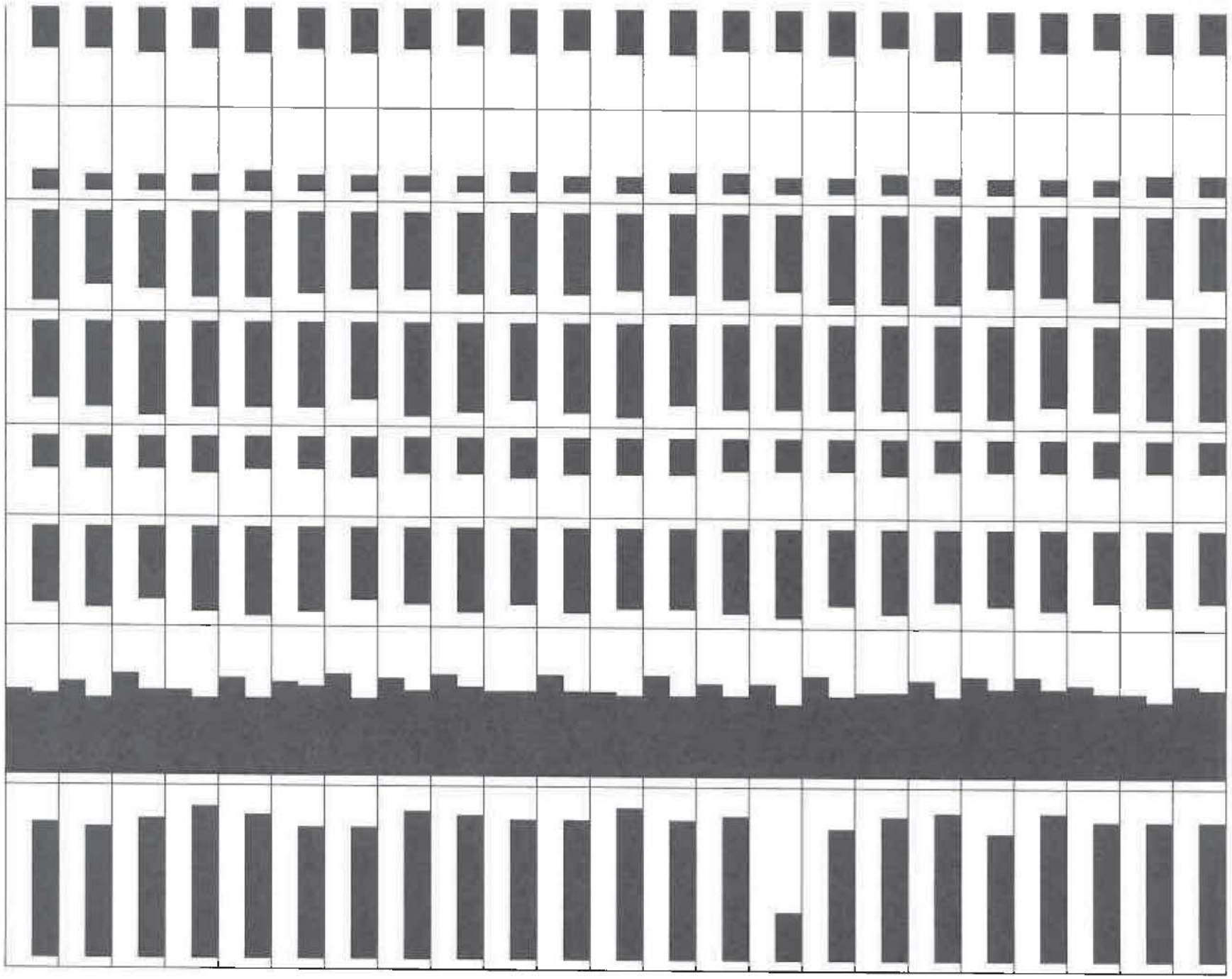


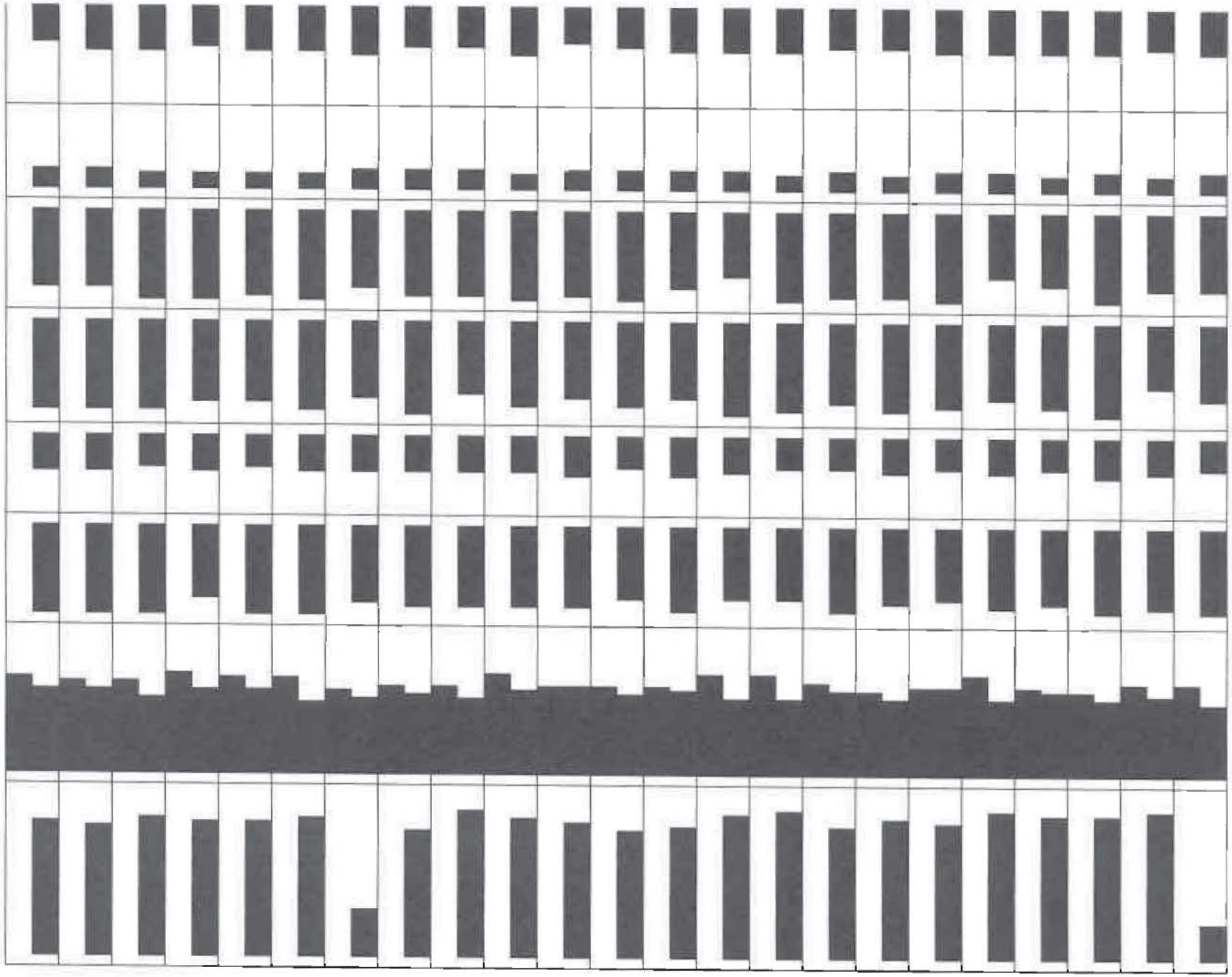


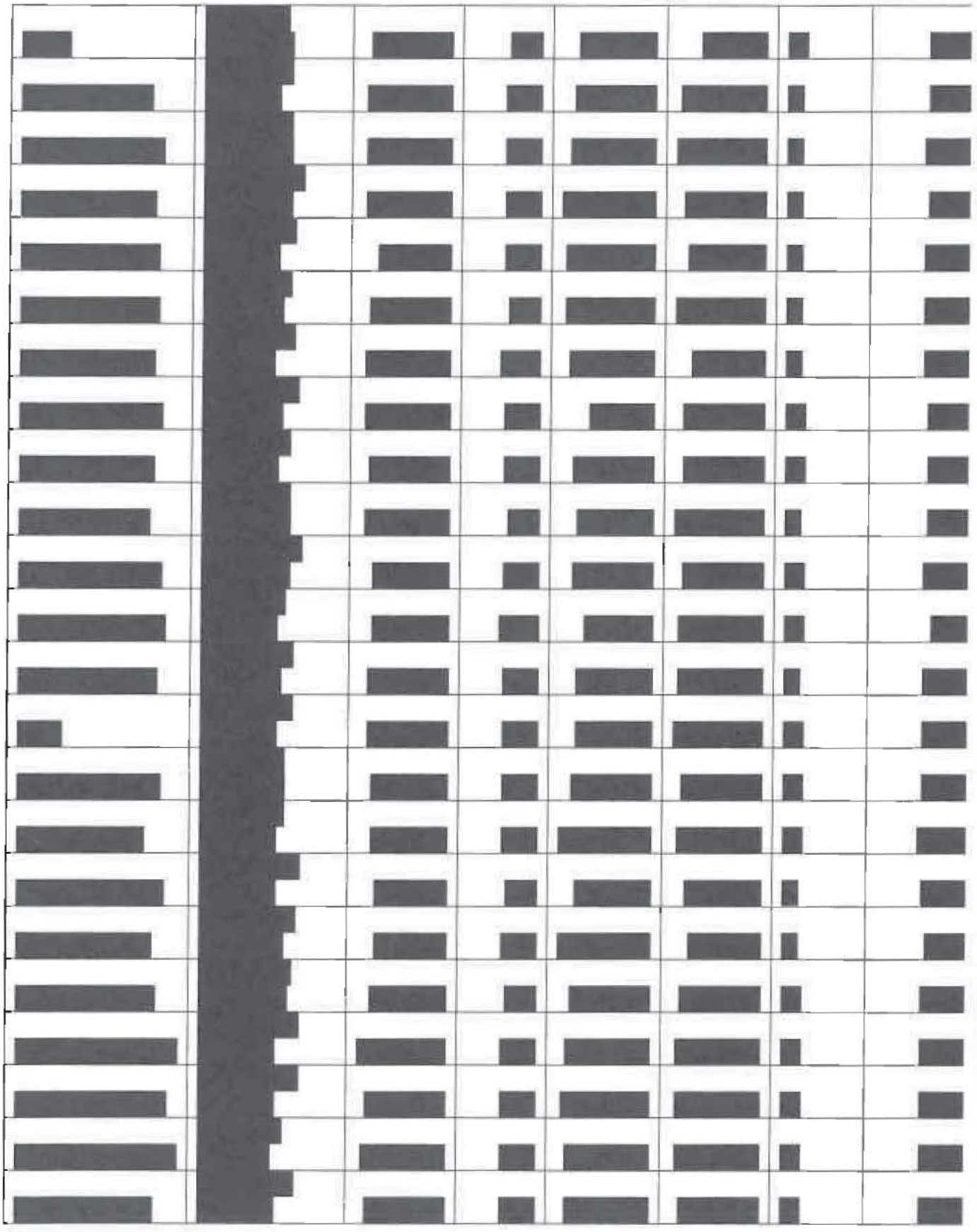


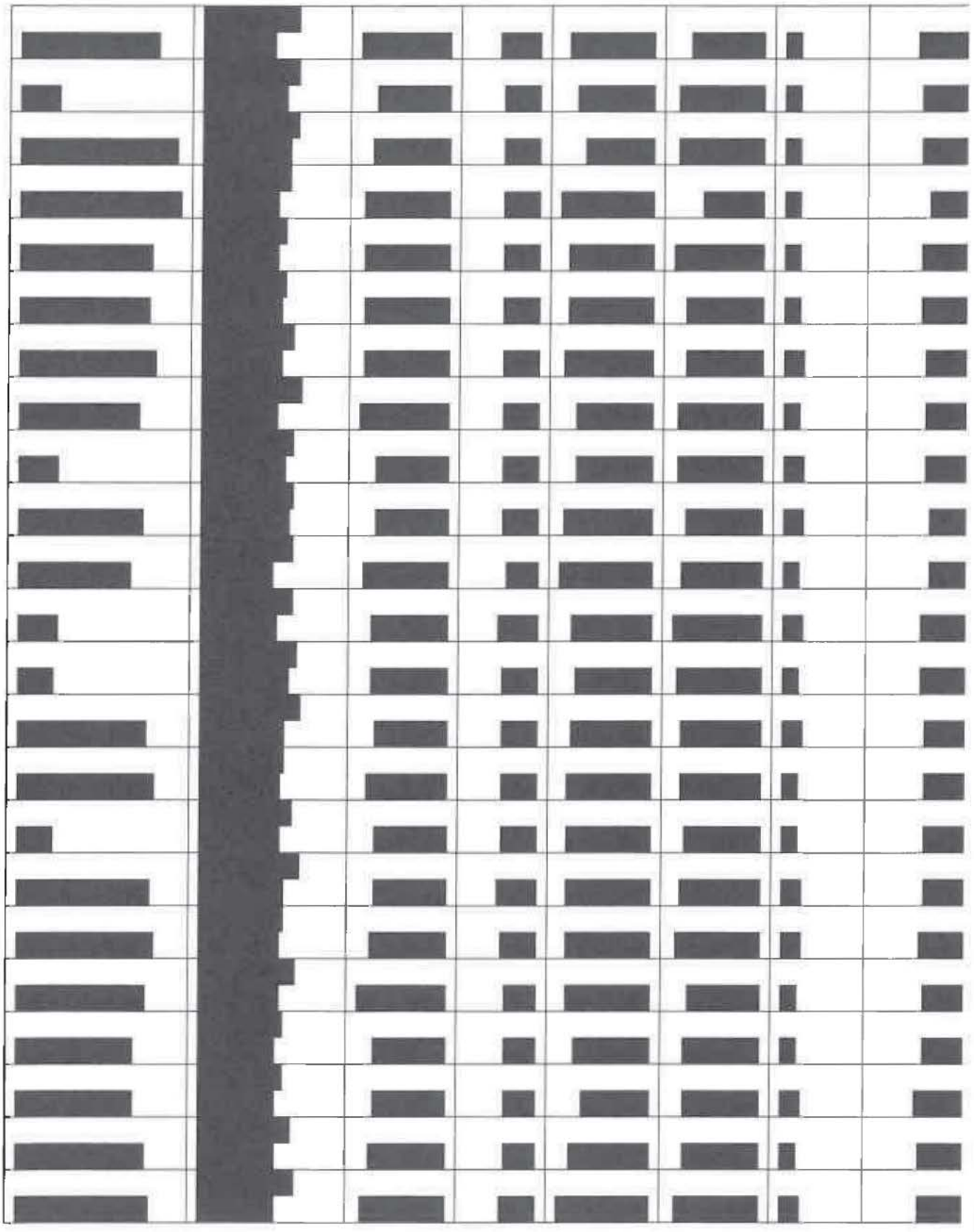


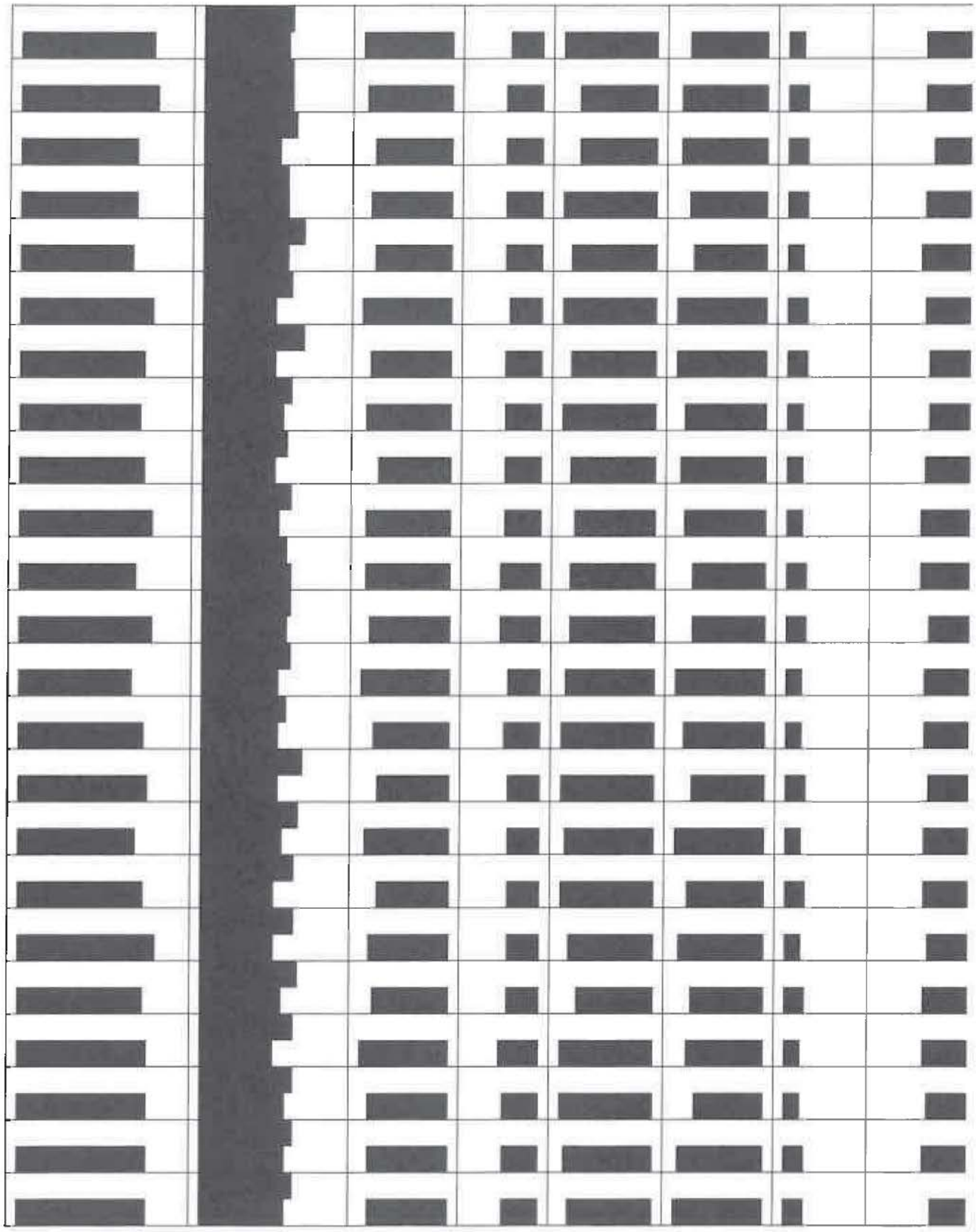


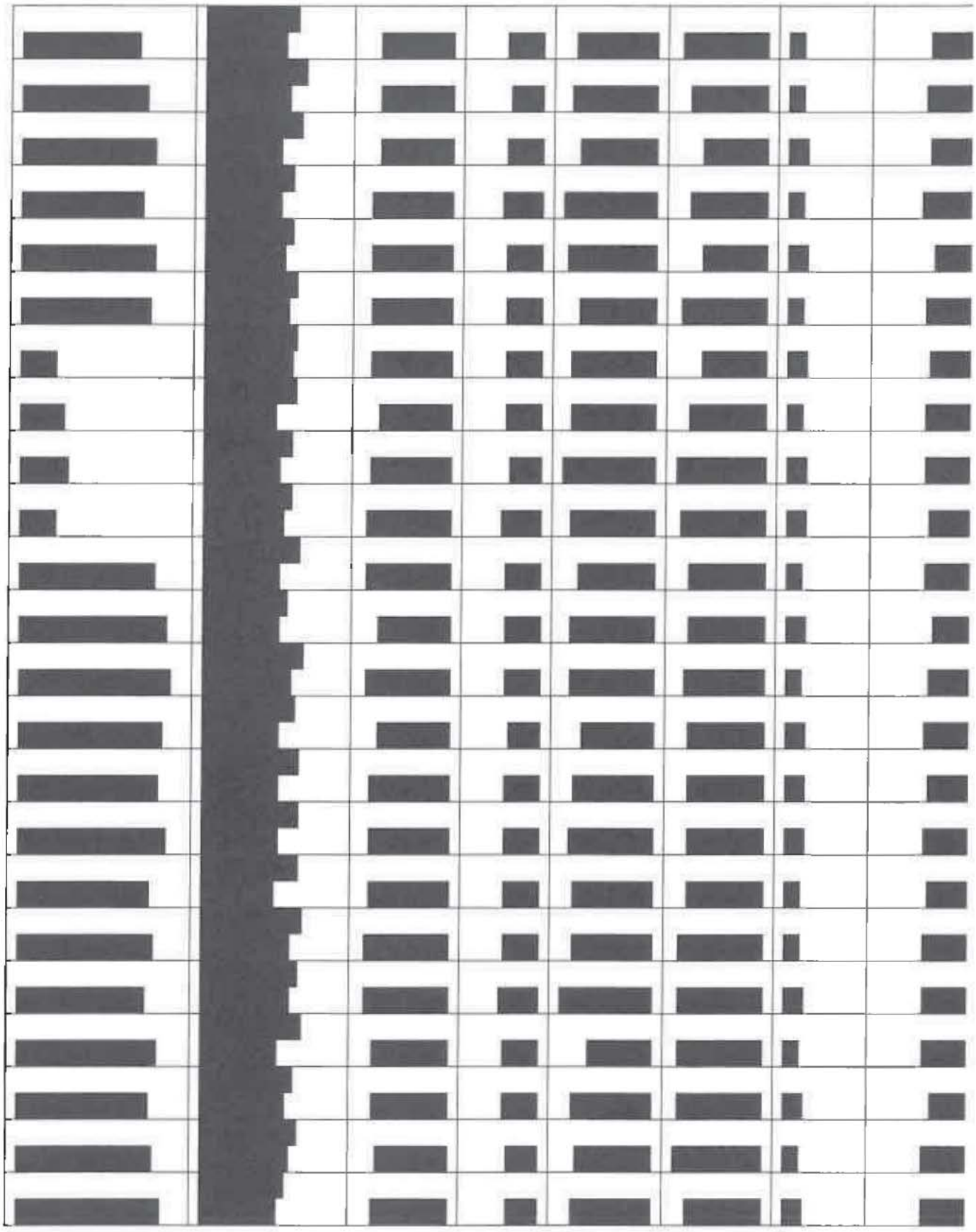


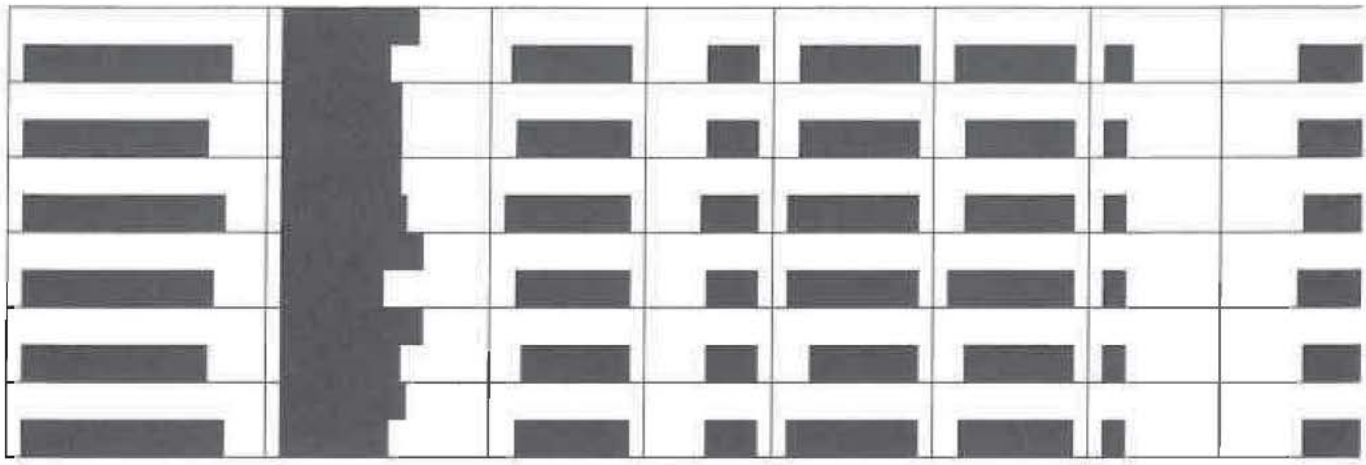












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II.A.8. PUBLIC

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a. [redacted]

b. [redacted]

c. [redacted]

END CONFIDENTIAL ***

II.D.1 PUBLIC

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EarthLink employs a wide range of strategies to win new customers and retain current customers for *Dedicated Services*. EarthLink generally targets new customers through direct sales and advertising across various media, and it strives to retain current customers by building long term relationships and providing a customer experience that is superior that offered by its competitors.

*****BEGIN CONFIDENTIAL** [redacted]

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II.F.8 CONFIDENTIAL

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EarthLink purchases *Dedicated Services* under several *ILEC Tariff Plans*. The terms and conditions of these plans place significant constrains upon EarthLink's ability to purchase services and optimize circuits as outlined in (a) through (e) in the question above. Some of the most onerous terms and conditions of these *Tariff Plans* are provisions that require EarthLink to make large *Prior Purchase-Based Commitments*, which are often enforced by excessive shortfall penalties.

For example, EarthLink purchases *Dedicated Services* under the Verizon CDP (Commitment Discount Plan) in legacy Bell Atlantic and NYNEX territories.[1] This *Tariff Plan* requires that the buyer commit to maintaining 90% of its *DS1* and *DS3* purchase volumes in service with Verizon in order to obtain discounts on Verizon's extremely high *One Month Only Rates* and *Non-Rate Benefits*, such as waivers of certain nonrecurring charges and circuit portability.[2] If the buyer drops below this commitment level, or exceeds the commitment level by more than 30%, Verizon imposes unreasonably high penalties.

Specifically, in the event the buyer is not able to maintain its committed volume, Verizon nonetheless requires the buyer to pay for this volume in full. Such penalties accrue as pure profit for Verizon because Verizon does not incur any costs for circuits *that are never provisioned.* The Verizon CDP circuit "true up" (comparison of actual in service quantities to the minimum and maximum commitment) is done every six months and the shortfall penalty is calculated as follows:

"If the CDP Customer fails to maintain its Minimum Commitment for a service type or combined service type over the preceding six (6) months, the CDP Customer shall be assessed an amount equal to the difference between (1) the total dollar amount associated with that service type or combined service type over the preceding six (6) months and (2) the total dollar amount associated with that service type or combined service type which would have been applied over the preceding six (6) months had the Minimum Commitment been satisfied."[3]

In addition, if the buyer exceeds the minimum commitment by more than 30%, then the buyer is forced to increase the minimum commitment or be assessed an "adjustment" penalty. This "adjustment," in effect, retroactively increases the buyer's rates for all circuits purchased in excess of the 30% threshold to Verizon's full *One Month Only Rates*:

"If the CDP Customer has satisfied its Minimum Commitment for the preceding six (6) months but exceeded its maximum service level, the Telephone Company will apply an adjustment in

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1 *See* Verizon Tariff FCC No. 1, § 25.1; Verizon Tariff FCC No. 11, § 25.1.

2 Verizon Tariff FCC No. 1, § 25.1.3(A)(5); Verizon Tariff FCC No. 11, § 25.1.3(A)(5).

3 Verizon Tariff FCC No. 1, § 25.1.7(B); Verizon Tariff FCC No. 11, § 25.1.7(B).

order to true-up the discount percentages or TPP rates that were applied in excess of that allowed by the maximum service level. The true-up will result in an adjustment (charge up) of the discounted excess amount back to standard, non-discounted rates, unless the CDP Customer elects to increase its Minimum Commitment upward to at least seventy-five percent (75%) for DDS and/or Voice Grade services and ninety percent (90%) for all other service types of the total number of DS0 equivalent Channel Terminations for the service type or combined service type involved at the time the true-up was performed."[4]

*****BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL ***** Moreover, the overage penalties in the CDP and other *Tariff Plans* incentivize EarthLink to continuously increase its commitment levels, exacerbating and prolonging these harmful effects.

Terms and conditions like these are common among *ILEC Tariff Plans*, and challenging them in a comprehensive manner would require filing countless complaints regarding different *Term Commitment* provisions, *Volume Commitment* provisions, rates and rate zones, penalties, early termination fees, and myriad other variables across *ILEC Tariffs*. Thus, EarthLink has focused its resources on advocacy in the special access rulemaking proceeding rather than on challenges to particular *ILEC Tariff Plans*. Commission action in the rulemaking proceeding is the more appropriate means for addressing such systemic problems.

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4 Verizon Tariff FCC No. 1, § 25.1.7(D); Verizon Tariff FCC No. 11, § 25.1.7(D).

II.F.10 PUBLIC

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EarthLink has purchased circuits pursuant to a *Tariff* solely for the purpose of attempting to meet the *Prior Purchase-Based Commitments* in *ILEC Tariff Plans* and thereby avoid shortfall penalties.

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II.F.11 PUBLIC

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See Table below.

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